

1 MR. KELLER: Yes. It is on K
2 Street, I believe.

3 JUDGE SIPPEL: Well, how about
4 that? Could you send -- I don't mean to send
5 an attorney, but is there an attorney or a
6 staff member from your office who could go
7 down there and start looking through these
8 documents?

9 MS. KANE: Well, honestly, if
10 there is a location where we could work to
11 review the documents and determine, if any of
12 them, we needed to be copied, that would be
13 okay with us, Your Honor. But absent having
14 that kind of option, then I see now choice but
15 to have them copied.

16 If there is not a work space for
17 us to review them and not -- I don't know how
18 this is set up, but obviously, we don't want
19 to be sitting in the middle of a copy center
20 reviewing this information.

21 JUDGE SIPPEL: I got the
22 impression there were desks. It is over on K

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1 Street. Send somebody out when they have
2 lunch just to go down and take a look at the
3 place.

4 MS. KANE: We could do that, Your
5 Honor.

6 MR. KELLER: And we are also -- I
7 am willing to work with the Bureau on some
8 alternate arrangement. I am not committing to
9 this right now, but it is either possible
10 under proper safeguards and control procedures
11 that we might even be willing to let the
12 Bureau have the documents for a period of time
13 to review them in their own facilities, and
14 then copy them if they want to.

15 JUDGE SIPPEL: Are they Bates
16 stamped or something like that?

17 MR. KELLER: No. Right now they
18 are organized by call sign. We have got
19 documents. Each call sign, a divider, and the
20 documents behind that. So all I am saying is
21 I am willing to cooperate with the Bureau and
22 work out something on this, but we just do not

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1 have the money to copy all these documents.

2 MR. HAVENS: Your Honor.

3 JUDGE SIPPEL: Is this Mr. Havens?

4 MR. HAVENS: Yes, sir.

5 JUDGE SIPPEL: You aren't going to
6 pay for the copying, are you?

7 MR. HAVENS: I might do that.

8 JUDGE SIPPEL: Oh? Okay. Let's
9 hear you.

10 MR. HAVENS: Okay. I may pay for
11 the copying, copy up in DC, and in addition,
12 Maritime submitted to the Bureau an affidavit
13 about a half-year ago stating that all the
14 records of the site based licenses when they
15 were sold to MCLM were placed at a certain
16 storage facility near Washington, and Mobex
17 who is the seller of these did not pay the
18 copy place and, therefore, they are
19 withholding the records.

20 So I would -- I don't want to take
21 time here, but I would discuss that with the
22 Enforcement Bureau and make arrangements to go

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1 to that storage facility and obtain those
2 records. Those are not the same records as
3 these 12 boxes that are coming out of Indiana,
4 and those were the essential records.

5 JUDGE SIPPEL: You are saying
6 there are additional documents over and above
7 the 12 boxes?

8 MR. HAVENS: Yes.

9 JUDGE SIPPEL: and they are
10 relevant to this issue?

11 MR. HAVENS: They are the most
12 relevant. The issue in G is not only whether
13 the stations are operating now or are turned
14 off, but whether they were constructed timely
15 and with the required interconnection and
16 other basic requirements by the construction
17 deadline, which was -- I don't know -- well
18 over 10 years ago.

19 Those documents are the ones that
20 MCLM stated in its opposition to my company's
21 petition to deny the renewal application of
22 this WRV 374. They have signed a sworn

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1 statement by the person who was in control of
2 those records, their former in-house counsel,
3 Mr. Treadmore, that those documents that
4 contain the information on these stations,
5 whether they were built or not and whether
6 they were operated or not in their critical
7 initial period were placed at a certain
8 storage facility, and then Mobex -- Instead of
9 the buyer keeping them, they all went to this
10 storage facility, and Mobex dissolved and
11 couldn't pay. So we would like to --

12 JUDGE SIPPEL: Who is paying --
13 Well, who is paying then for the storage?

14 MR. HAVENS: We don't know the
15 actual situation at the storage facility, but
16 my companies would like the opportunity,
17 whether it is a subpoena or voluntary
18 arrangement, to contact the storage facility
19 and, with some authority from Your Honor, to
20 obtain whatever documents they have.

21 JUDGE SIPPEL: Well, let me see if
22 Mr. Keller can shed any light on that.

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1 MR. KELLER: Yes. First of all,
2 to clarify, 12 boxes -- In addition to the 12
3 boxes, I may have at least one other box of my
4 own that has some additional information that
5 we would produce. Basically, what we are
6 producing here in Washington is all the
7 documents we have.

8 That is not necessarily all the
9 documents that maybe perhaps existed at one
10 time. However, what Mr. Havens is referring
11 to, I believe the firm was called Iron
12 Mountain or something like that. It was --

13 MR. HAVENS: No, it was a
14 different name.

15 MR. KELLER: Well, whatever,
16 whatever it is, it is not -- Some of the
17 documents were with this company, not all.
18 What I can do, I will clarify that when I
19 respond to the Bureau, tell them exactly. But
20 my understanding is -- and again, I will
21 double check this and clarify it when I
22 respond to the document request. My

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1 understanding is that those documents no
2 longer exist, because after a certain period
3 of time that company destroyed them when --

4 MR. HAVENS: We were going to test
5 that.

6 MR. KELLER: Right. I understand
7 that. I understand that, but to the extent
8 that the documents are -- Assuming, for the
9 sake of argument, that it was determined that
10 the documents are still available at Iron
11 Mountain or whatever the company is, without
12 having checked with my client in advance, I
13 could say we would have no problem allowing
14 inspection of those documents, subject to the
15 protective order in this case; because I
16 believe some of those documents go to other
17 issues like payments and financings and things
18 like that.

19 MR. HAVENS: The documents that I
20 am talking about, if I am recalling exactly
21 what Maritime stated, they are not in
22 Maritime's control. The declaration stated

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1 that, when Mobex bought those site based
2 stations, all of the ones in Issue G, it
3 elected not to keep the documents on the
4 stations it was purchasing and the licenses.
5 They remained with the seller, Mobex, and
6 Mobex placed them at this storage facility.

7 So we want to go directly to the
8 storage facility. We don't want to get, and
9 we would see no basis to get, MCLM approval or
10 disapproval of that, based on the MCLM
11 statement that it didn't take possession of
12 the documents. But in any case, in this
13 discovery process we want some time to go to
14 third parties and examine the depositions,
15 document requests and see what they have,
16 particularly where MCLM has stated itself
17 under oath that it placed the essential
18 documents at this facility.

19 JUDGE SIPPEL: Well, I think the
20 first order of business would be to find out -
21 - somebody to contact the facility and find
22 out if these documents actually do exist

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1 there. I don't know what the best way to
2 proceed on that is, but I am sure that
3 somebody can figure that out.

4 MR. KELLER: I would agree, Your
5 Honor. There is nothing to stop them from
6 talking to any third parties about documents
7 that he wants. We don't need a discovery
8 order to obtain information from nonparties.

9 MR. HAVENS: We want the discovery
10 in order to dispose persons --

11 JUDGE SIPPEL: No, I know why you
12 want it. I am saying that I am not going to
13 issue an order to produce documents that don't
14 exist anymore.

15 MS. KANE: Your Honor, maybe it
16 would be helpful if Mr. Keller would identify
17 exactly who has these documents or who may
18 have these documents. It sounds like there
19 might be some confusion as to which company
20 has these documents. If Mr. Keller could
21 undertake the investigation to determine where
22 these documents may be and who we should

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1 contact, we will be happy to do so.

2 JUDGE SIPPEL: Just find out who
3 in Maritime would have information on this,
4 relevant information, and find out as soon as
5 you can.

6 MS. KANE: Now with regard to Mr.
7 Keller's option of making the documents
8 available to the Bureau for us to review here,
9 if that is still an option, we would obviously
10 prefer that option than to have to have people
11 working at an off-site location, which is
12 still sort of --

13 JUDGE SIPPEL: But Mr. Havens was
14 talking about making copies and paying for
15 them.

16 MS. KANE: Well, for himself, Your
17 Honor. He is entitled to -- He asked for the
18 same discovery we did. So he is entitled to
19 his own working set of those documents, much
20 like the Enforcement Bureau is.

21 JUDGE SIPPEL: I heard -- You
22 didn't say this, Mr. Havens, but I got the

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1 impression you were talking about making
2 multiple copies so that the Bureau would be
3 able to also --

4 MR. HAVENS: Well, I would send
5 someone there to see the quantity of documents
6 and try to arrange a cost effective copying
7 and, depending on the price, given the cost,
8 I'm sure you all know, of time and legal and
9 everything else, and opportunity passing -- I
10 mean, there is a lot -- These site based
11 stations are blocking my companies nationwide.
12 We are losing opportunities, profit and
13 nonprofit.

14 So, yes, it would make sense for
15 me to probably pay for the copying, but if I
16 find a warehouse full of documents that are
17 irrelevant and trying to fish through them and
18 find a needle in the haystack, then that may
19 not be worth copying. We would have to take
20 a look.

21 JUDGE SIPPEL: I am talking about
22 the 12 documents. I am trying to help the

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1 Bureau facilitate things for the parties that
2 really are interested in these documents. You
3 are, obviously. Correct?

4 MR. HAVENS: One thing, Your
5 Honor, you know, I am not an attorney. I have
6 been through litigation. I have seen parties
7 produce documents or their staff might have
8 made a mistake or whatever -- whatever it is,
9 I have seen parties produce documents that are
10 not responsive, and you really have to work to
11 find things.

12 So I don't want to come in here
13 and offend anyone if I say I will pay for the
14 copies for the Enforcement Bureau and then go
15 down there or send somebody down there and
16 find out these don't appear that relevant, and
17 I might be wasting the money. But I am ready
18 to send somebody down there, review them, if
19 it is permitted. I assume these are not
20 confidential or highly confidential. They are
21 all records of Commission licenses and
22 purported legal operations.

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1 So anyway, I will send somebody
2 down there as soon as I am told where they
3 are, and take a look, and then I will get with
4 the Bureau and see if we can cover the cost.

5 MR. KELLER: Let me just also
6 state an option here. Obviously, Mr. Havens
7 will have to decide what he wants to do.

8 The quite that I have cited of six
9 to eight thousand dollars was what they
10 thought it was going to cost to scan all those
11 documents in for us, so that we would then
12 have an electronic copy. In the process of
13 doing that, they would be able to
14 electronically add some kind of Bates serial
15 numbering to the documents as well.

16 It would then be possible to
17 electronically distribute the documents to
18 everybody, but again we don't have the six to
19 eight thousand dollars to do that. That is
20 number one.

21 Number two, as to those 12 boxes,
22 there is nothing in there that we are going to

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1 be seeking confidentiality on. As I
2 mentioned, I maybe have another box or so of
3 documents in my office. Some of those
4 documents, we may be seeking confidentiality
5 on, but to that extent, I can copy those,
6 those limited number of documents.

7 Finally, as to what shape the
8 documents are in or whether they are relevant,
9 the Bureau's discovery -- excuse me, the joint
10 discovery request of Mr. Havens and the
11 Bureau was very broad. They basically wanted
12 all documents relevant to the construction,
13 operation, blah-blah-blah.

14 So, basically, I have made no
15 effort to weed out things, and the only
16 organization we have done is to divide them by
17 -- We figured the best organization we could
18 do is to line them up by call sign.

19 MS. KANE: So you organized the
20 documents yourself, rather than they are not
21 maintained in the ordinary course of business?

22 MR. KANE: No, they were

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1 maintained in the ordinary course of business.
2 In fact, Mr. Havens, Skytel previously had
3 access to these documents recently when they
4 were in Indiana for document productions and
5 investigation in connection with the
6 bankruptcy case, and his counsel sat in the
7 same room.

8 These documents were all in
9 Indiana in some lateral files. They were
10 organized in those files by names. I mean,
11 they know their facilities by names like World
12 Trade Center or Philadelphia or something like
13 that, and I just asked them to go through and
14 add -- as they put these in boxes, to add
15 dividers that identified the call sign for
16 each document.

17 You know, we here talk in terms of
18 call signs as we are going through, but beyond
19 that, I examined them enough to determine that
20 there is nothing there that we are going to
21 seek confidentiality on, because they are all
22 just sort of routine business operations.

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1 Now in addition, I have some
2 documents in my possession that are more of a
3 financial nature, and I will have to determine
4 whether any of those are subject to
5 confidentiality. But if they are, I will take
6 care of making the copies of those, because it
7 is a limited number.

8 JUDGE SIPPEL: When can you have
9 that done from your office, from the set in
10 your office? How long is that --

11 MR. KELLER: As I said, I was
12 prepared to do all of this within 10 days of
13 today, because that would be part of the
14 production. Anything that I am going to
15 physically copy and produce will be at least
16 within 10 days of today.

17 JUDGE SIPPEL: Would you prepare a
18 proposed order and send it to me today or
19 tomorrow morning?

20 MS. KANE: Yes, Your Honor.

21 JUDGE SIPPEL: To the extent that
22 you can, coordinate it with Mr. Keller. That

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1 would facilitate things for me immensely, and
2 I don't want something -- an order that is
3 going to be objected to, because it is
4 something or something or something. And of
5 course, everything is subject to
6 confidentiality, but if documents meet that
7 criteria. Okay.

8 That is a tall order, but I am
9 going to leave the rest of it up to the
10 attorneys to figure out what you want to do
11 and how you want to do it.

12 MR. HAVENS: Could I ask, on the
13 issue of cost, does that mean that, if my
14 companies do not meet the cost in this case
15 that we will not get copies?

16 JUDGE SIPPEL: Well, we haven't
17 gotten to that yet. Okay? We don't even know
18 whether certain documents exist or not. I am
19 not sure. No, I am not saying -- Now, look,
20 we are not going to make an issue of that, Mr.
21 Havens, and certainly not today.

22 MR. HAVENS: Okay.

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1 JUDGE SIPPEL: I got the
2 impression that you would be willing to maybe
3 spring for the cost. I pursued that with you
4 to see how far you were willing to take it.
5 Let's leave well enough alone right now,
6 unless -- Well, I am not going to say anything
7 more, because I am just going to confuse
8 myself and everybody else.

9 MS. KANE: Your Honor, I just want
10 to clarify what it is you would like a
11 prepared order on.

12 JUDGE SIPPEL: The order that I
13 said that I was going to need to issue in
14 order to move that discovery forward that you
15 initiated back in -- was it October?

16 MS. KANE: No, it was December,
17 Your Honor. Not too long ago.

18 JUDGE SIPPEL: December. Oh,
19 well, that is not too bad.

20 MR. KELLER: So now you are
21 granting the motion concerning discovery?

22 JUDGE SIPPEL: Absolutely,

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1 exactly, and subject to the law and the
2 discovery proceed in accordance with
3 discussions today, and that at least the
4 initial wave of documents be produced in 10
5 days.

6 MR. PLACHE: Your Honor, it sounds
7 as if there is only one copy of these
8 documents and that they are not Bates stamped.
9 There is no table of contents, and there's no
10 Bates stamps. With this many documents, it
11 would be good to have them at least Bates
12 stamped.

13 JUDGE SIPPEL: I agree. I agree.

14 MR. PLACHE: So then we can all
15 know we are working from the same set of
16 documents.

17 JUDGE SIPPEL: I am very squirmy
18 about that, and that is why I said I want them
19 under Mr. Keller's control in being examined.
20 That is what he proposed in the first
21 instance. At least, that gets it started.

22 MR. PLACHE: As long as they are

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1 under Mr. Keller's control and he is
2 responsible, but when others start to go
3 through them, if something gets lost or torn -

4

5 JUDGE SIPPEL: I understand.

6 MR. PLACE: -- displaced or out of
7 order, you know, when it gets returned, then--

8 MR. HAVENS: Can't MCLM Bates
9 stamp the documents?

10 MR. KELLER: Again, that is a very
11 time consuming and expensive undertaking.
12 What I was saying, the scanning --

13 MR. HAVENS: You mean in the
14 hearing, whenever you have to expend cost, it
15 is not possible?

16 JUDGE SIPPEL: Look, Mr. Havens,
17 we are talking about -- We haven't been
18 talking a hearing. We are talking about just
19 discovery, and we are doing the best we can
20 with what we have.

21 MR. KELLER: What I am saying is
22 the most efficient method, to Bates stamping

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1 and then subsequently, the most efficient
2 method to distribute these was to have them
3 scanned in, because if we have them scanned
4 in, they can add the Bates stamp as part of
5 the process.

6 JUDGE SIPPEL: Exactly.

7 MR. KELLER: But I think that is
8 going to cost at least \$6,000, possibly more.

9 JUDGE SIPPEL: And what would it
10 cost to Bates stamp those documents?

11 MR. KELLER: I don't even know.

12 MS. KANE: To hand Bates stamp
13 them, Your Honor?

14 MR. KELLER: To hand Bates stamp
15 them? It would take days probably. I mean,
16 I don't know.

17 MS. KANE: I don't know if it
18 would take that long. It would take somebody
19 with stickers putting the stickers on,
20 probably for a couple of days to get them
21 done.

22 JUDGE SIPPEL: Do you just go

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1 bang, bang, bang.

2 MS. KANE: We don't do that
3 anymore, Your Honor. It is very sad.

4 JUDGE SIPPEL: All right. You
5 figure what it is going to be, but somehow
6 that has to be resolved. I share counsel's
7 concern for having things that are not at
8 least Bates stamped before other lawyers
9 trying getting it into the act.

10 The first thing to do is find out
11 where they are located, whether there are
12 facilities down there and, Mr. Havens, what
13 the cost is going to be. I don't know what to
14 say. You got to figure out how you are going
15 to pay for these things.

16 MR. HAVENS: Well, that goes to my
17 question, whether it is my obligation to pay
18 for something.

19 JUDGE SIPPEL: No, it is not your
20 obligation. You offered to consider it.

21 MR. HAVENS: Okay, I will.

22 JUDGE SIPPEL: And I say thank

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1 you. That is all I am saying.

2 MR. HAVENS: All right.

3 MR. KELLER: Your Honor, it is certainly
4 not his obligation to pay for everybody to
5 have copies, but I think what he might have
6 been driving at -- and if not, I want to make
7 clear. Somebody who wants to come in and
8 inspect these documents, if they want to copy
9 them, they are going to have to pay to have
10 them copied.

11 One of the things we were
12 considering, and I don't know that this is an
13 option, because one of the things we
14 originally talked to the copy center about,
15 and they were willing to take a certain amount
16 of risk on this, was to go ahead and scan them
17 in and then divvy up the cost between people
18 who wanted copies of the documents; and I
19 suggested to them, well, that is fine, but the
20 trouble is I only think that there is probably
21 only two parties that might want copies of the
22 documents, the Bureau and SkyTel. So you are

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1 only dividing it two ways. So I don't know --
2 Would your firm be wanting copies of them?

3 MR. PLACHE: Of the WRV 374,

4 MR. KELLER: Oh, just of those?
5 See, that's it. So it is possible also, we
6 could have them scanned, and then there might
7 be a smaller fraction of that \$6,000 that
8 would have to be paid to get a copy of the
9 CDs.

10 MR. RICHARDS: Would the creditors
11 committee pay to scan them?

12 MR. KELLER: Well, we have raised
13 that issue, but -- oh, of the creditors
14 committee? I don't know that the creditors
15 committee -- they did finance the -- We have
16 approached them about that, but we are
17 fighting month to month just to get the
18 financing to not pay salaries. So I don't
19 know if we are going to get them to foot the
20 bill for that.

21 MR. RICHARDS: It just seems
22 something relevant to preserving the value.

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1 MR. KELLER: No, I understand. I
2 agree. I agree. So we are going to pursue
3 all these, and I will keep in touch with the
4 Bureau on it.

5 JUDGE SIPPEL: This gets more and
6 more interesting. You think it may take two
7 days? Let me say --

8 MS. KANE: I have no idea, Your
9 Honor. I haven't seen the documents. I don't
10 know whether they are the type of document you
11 can quickly flip through, and a paralegal
12 could quickly put the list on, or whether they
13 are different sizes.

14 Having been through all of those
15 stages in my career, I can't give you a sense.
16 It could take a couple of days. It could take
17 a week to do them by hand, but the reality is,
18 the most efficient and most effective way is
19 for them to be scanned and for them to be
20 Bates stamped at the time and, frankly, for
21 Mr. Keller's client to pay for that. That is
22 the most effective way for this to be done to

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